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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 481

WILLIAM A. ALBAUGH, Republican Candidate in the contested 1964 Maryland Primary election for United States Senator nomination,

Appellant,

v.

J. MILLARD TAWES, Governor of Maryland

and

LLOYD L. SIMPKINS, Secretary of State for the State of Maryland,

Appellees.

On Appeal from the United States District Court for the District of Maryland

JURISDICTIONAL STATEMENT

WILLIAM A. ALBAUGH
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Mt. Rainer, Maryland 20822
Appellant, Pro Se

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JURISDICTIONAL STATEMENT

Appellant, William A. Albaugh, appeals from the final Order of the United States District Court for the District of Maryland, entered on August 19, 1964, dismissing the complaint of appellant as plaintiff in the Court below

which sought to obtain a declaratory judgment that the District of Columbia was a part of the State of Maryland for purposes of United States Senator elections and to obtain an interlocutory and permanent injunction and other equitable relief to nullify the effect of the 1964 Maryland Senatorial elections being conducted and certified on the basis that the District of Columbia has ceased to be a part of the State of Maryland. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial Federal constitutional questions are presented.

OPINION BELOW

The Opinion and Order of dismissal of the District Court for the District of Maryland have not been reported. That Opinion and Order are set forth in Appendix C and D.

JURISDICTION

Appellant as plaintiff brought this action under 28 U.S.C. §§ 1343, 2201, 2202, and 2281 and 42 U.S.C. § 1983. The final Order of dismissal of the District Court was entered on August 19, 1964, and notice of appeal was filed in that court on August 24, 1964.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

This court has jurisdiction: Wesberry v. Sanders, 376 U.S. 1 (1964); Maryland Committee v. Tawes, 84 S.Ct. 1442 (1964).

STATUTES INVOLVED

The following Federal and State statutes regulating Maryland Congressional elections are attacked on the

grounds that their present enforcement is unconstitutional in the view of the appellant:

1. The Organic Act of 1801, 2 Stat. 103, ch. 15 approved February 27, 1801. This statute is set forth in Appendix A.

2. The Maryland law concerning commissions of elections: Art. 33, section 143, Ann. Code of Md., 1957. This statute is set forth in Appendix B.

QUESTIONS PRESENTED

1. Whether the District of Columbia is a part of the State of Maryland for purposes of United States Senator elections?

2. If so, whether the Organic Act of 1801, 2 Stat. 103, ch. 15, and the Maryland laws said to authorize excluding the District of Columbia from Maryland Congressional elections are not unconstitutional?

This is the first time in this action that an Act of Congress has been drawn into question. The lower court did not address this question. 28 U.S.C. § 2403 may be applicable.

STATEMENT OF THE CASE

At the primary election held in Maryland on May 19, 1964, appellant, William A. Albaugh, was an unsuccessful candidate for the Republican nomination for United States Senator. The said election was conducted on the assumption that the District of Columbia was not a part of the State of Maryland and no votes were counted from the District of Columbia. On June 9, 1964, appellant filed the present action in the United States District Court for the District of Maryland seeking a judgment declaring that the District of Columbia is a part of the State of Maryland for purposes of United States Senator elections.

and ordering appellees, defendants below, to treat said primary and any future election, based thereupon, as null and void because residents of the District of Columbia did not vote in said election. Appellant attacked the validity of Art. 33, section 143, Ann. Code of Md. 1957, as interpreted by the state officials. He requested the designation of a three-judge District Court to decide the issues raised, and this request was granted. Appellees, the Governor and the Secretary of State of Maryland, moved to dismiss the complaint, and the appellant moved for summary judgment, as the case presents no disputed issue of fact.

On July 20, 1964, the opinion (App. C) which sustained the appellees' motion to dismiss was filed by the three-judge District Court comprised of Sobeloff, Chief Circuit Judge, Thomsen, Chief Judge, and Northrop, District Judge.

The opinion asserted:

> "* * * This court is clear that residents of the District of Columbia have no right to vote in Maryland elections generally, and specifically, in the selection of United States Senators. * * *"

The court founded this position on the following:

> "* * * Since the "Organic Act of 1801" it has been uniformly recognized by the executive, legislative and judicial branches of the government of the United States and of the State of Maryland that residents of the District of Columbia are no longer citizens of the State of Maryland. * * *"

The court failed to concede that the post-cession Maryland laws regulating Federal elections in Maryland, Md. Act of 1799, ch. 50, and Md. Act of 1791, ch. 62, designated the territory, now known as the District of Columbia, as part of the second and third Congressional Election Districts. No notice was taken that these Federal

election regulations were still in force on February 27, 1801 and that only Congress or the Maryland State Legislature, acting in its capacity as a national legislative body, had the authority to change these regulations, Constitution Art. I, Sec. 4.

The court did not say that the "Organic Act of 1801" repealed the aforesaid existing Federal election regulations. It failed to produce any other Act of Congress passed on February 27, 1801 which could reasonably be interpreted as repealing said regulations.

An order of dismissal (App. D) was filed by the three-judge District Court on August 18, 1964. The appellant filed a notice of appeal in the lower court on August 24, 1964.

QUESTIONS ARE SUBSTANTIAL

This case presents the issue of whether or not state territory containing the homes of United States citizens may be arbitrarily reduced to non-state territory. In this preliminary argument the appellant will try to show that the Act of Congress relied upon to convert the District of Columbia from Maryland territory to non-state territory fails to authorize this type of change. Second, an argument will be presented to show that the "equal privileges" clause of the Constitution prohibits this type of transformation.

A. The Organic Act fails to repeal state status.

In accordance with Constitution, Art. I, Sec. 4, which provides:

> "The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof; But the Congress may at any time by law make or alter such regulations, * * *"

the Maryland State Legislature, acting in its capacity as a national legislative body, subdivided the state into Congressional election districts following the July 16, 1790 cession and placed the ceded territory, now known as the District of Columbia, in the second and third Congressional Districts, Md. Act of 1791, ch. 62. This law defined the boundary of the State of Maryland and included therein the ceded District of Columbia. This law was still in force when Congress passed the Organic Act, 2 Stat. 103, ch. 15 (App. A) on February 27, 1801. Said Organic Act provided:

> "* * * that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, * * *"

In the face of this Congressional decree that the existing laws of Maryland be continued it is impossible to accept the lower court's position that this act of Congress repealed the existing Maryland Congressional election regulations which defined the District of Columbia as a part of the State of Maryland.

The said Organic Act of 1801 (App. A) does make special provisions so that the District of Columbia will be under the independent jurisdiction of a United States circuit court for the District of Columbia and have independent justices of the peace, judges of the orphans' court, and registers of wills. However, making independent arrangements for the local government of the ceded territory does not conflict with the District of Columbia remaining a part of the State of Maryland for purposes of regulating national elections.

B. The Constitution bans national disenfranchisement.

The question of regulating fairly the Federal elections goes to the very heart of our constitutional form of government. Respect for the law is directly dependent upon

respect for the law makers. There can be no respect for any law maker who has been elected dishonestly.

The previously quoted Constitution Art. I, Sec. 4 vests the state legislatures with authority to enact the Federal election regulations subject to (1) conformity with any election regulations that Congress may enact and (2) conformity with the Constitution.

Constitution Art. IV, Sec. 2, the "equal privileges" clause guarantees:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. * * *"

The District of Columbia territory, like the rest of the State of Maryland, was a charter member of the United States. The citizens of the District of Columbia have always been citizens of the State of Maryland and under the perpetual protection of the above "equal privileges" clause. Any act of Congress which removes the District of Columbia from the State of Maryland and does not place the territory in another state automatically reprives the District of Columbia citizens of their equal right to vote in Federal elections and is in direct conflict with the above "equal privileges" clause.

INTERLOCUTORY INJUNCTION

The appellant has not yet moved for an interlocutory injunction. The appellees are automatically stayed by the general election which does not occur until November 3, which should allow adequate time for this court to assume jurisdiction of this action.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. For the reasons stated, it is

urged that jurisdiction be noted and that judgment of the District Court be reversed and the case remanded to that court for disposition consistent with this court's opinion.

Respectfully submitted,

WILLIAM A. ALBAUGH
3368 Chillum Road
Mt. Rainer, Maryland 20822
Appellant, Pro Se

September, 1964

APPENDIX A

THE ORGANIC ACT OF 1801

(2 Stat. 103, ch. 15)

An Act concerning the District of Columbia.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said state to the United States, and by them accepted for the permanent seat of government; and that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid.

Sec. 2 And be it further enacted, That the said district of Columbia shall be formed into two counties; one county shall contain all that part of said district, which lies on the east side of the river Potomac, together with the islands therein, and shall be called the county of Washington; the other county shall contain all that part of said district, which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed to all intents and purposes to be within both of said counties.

Sec. 3. Be it further enacted, That there shall be a court in said district, which shall be called the circuit court of the district of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges resident within said district, to hold their respective offices during good be-

haviour; any two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk of the court in each of said counties, who shall take the oath and give a bond with sureties, in the manner directed for clerks of the district courts in the act to establish the judiciary of the United States.

Sec. 4. Be it further enacted, That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

Sec. 5. Be it further enacted, That said court shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

Sec. 6. Provided, and be it further enacted, That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district, at the time of serving the writ.

Sec. 7. Be it further enacted, That there shall be a marshal for the said district, who shall have the custody of the gaols of said counties, and be accountable for the

safe keeping of all prisoners legally committed therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said district, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

Sec. 8. Be it further enacted, That any final judgment, order or decree in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the supreme court of the United States, by writ of error or appeal, which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein, as is or shall be provided in the case of writs of error on judgments, or appeals under orders or decrees, rendered in the circuit court of the United States.

Sec. 9. Be it further enacted, That there shall be appointed an attorney of the United States for said district, who shall take the oath and perform all the duties required of the district attornies of the United States; and the said attorney, marshall and clerks, shall be entitled to receive for their respective services, the same fees, perquisites and emoluments, which are, by law allowed respectively to the attorney, marshal and clerk of the United States, for the district of Maryland.

Sec. 10. Be it further enacted, That the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the treasury of the United States.

Sec. 11. Be it further enacted, That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time

think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws herein before adopted and continued, in the eastern part of said district.

Sec. 12. And be it further enacted, That there shall be appointed in and for each of the said counties, a register of wills, and a judge to be called the judge of the orphans' court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like fees, as are exercised, performed, and received, by the registers of wills and judges of the orphans' court, within the state of Maryland; and appeals from the said courts shall be to the circuit court of said district, who shall therein have all the powers of the chancellor of the said state.

Sec. 13. And be it further enacted, That in all cases where judgments or decrees have been obtained, or hereafter shall be, obtained, on suits now depending in any of the courts of the commonwealth of Virginia, or of the state of Maryland, where the defendant resides or has property within the district of Columbia, it shall be lawful for the plaintiff in such case upon filing an exemplification of the record and proceedings in such suits, with

the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally been obtained in said court.

Sec. 14. And be it further enacted, That all actions, suits, process, pleadings and other proceedings of what nature or kind soever, depending or existing in the courts of Hustings for the towns of Alexandria and Georgetown, shall be, and hereby are continued over to the circuit courts to be holden by virtue of this act, within the district of Columbia, in manner following; that is to say: all such as shall then be depending and undetermined, before the court of Hustings for the town of Alexandria, to the next circuit court hereby directed to be holden in the town of Alexandria; and all such as shall then be depending and undetermined, before the court of Hustings for Georgetown, to the next circuit court hereby directed to be holden in the city of Washington: Provided nevertheless, that where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace within their respective counties, shall have cognizance thereof.

Sec. 15. And be it further enacted, That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the district, shall be tested in the name of the chief judge of the district of Columbia.

Sec. 16. And be if further enacted, That nothing in this act contained shall in any wise alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any other body corporate or politic, within the said district, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria.

Approved February 27, 1801 (2 Stat. 103, ch. 15)

APPENDIX B

MARYLAND LAW Art. 33, Section 143
(Ann. Code of Md., 1957 edition)

Commissions of Election.

(a) Duties of Secretary of State—The Secretary of State shall record in his office, in a book kept by him for that purpose, each certified statement and determination which shall be delivered to him by the Board of State Canvassers, and every dissent or protest which shall have been delivered to him by a canvasser. He shall, without delay, transmit a copy under seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the Governor; and he shall cause a copy of such certified statements and determinations to be published in one newspaper in the City of Annapolis and one in the City of Baltimore.

(b) Governor to issue commissions—In conformity with the statements and determinations made as aforesaid by the Board of State Canvassers, the Governor shall issue commissions to the different persons elected, as now provided by the Constitution and laws of this State.

(c) Certificate for United States Senator and members of the House of Representatives—In addition, the Secretary of State shall likewise without delay transmit a copy under seal of his office of such certified determination and statement as to the election of a United States Senator to represent the State of Maryland in the Senate of the United States to the Secretary and to the presiding officer respectively of the United States Senate, to inform that body of the result of the election for Senator; and such certificate shall be prima facie evidence of the right of the candidate certified as receiving the highest number of votes to be seated. A similar certificate shall be transmitted to the Secretary and to the presiding officer of the

House of Representatives to inform that body of the results of the elections for members of the House of Representatives. (1957, ch. 739, § 1.)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. 15618

WILLIAM A. ALBAUGH, Republican Candidate in the Contested 1964 Maryland Primary Election for the United States Senator Nomination,

v.

J. MILLARD TAWES, Governor of Maryland

and

LLOYD L. SIMPKINS, Secretary of State, For the State of Maryland

Filed: July 20, 1964

William A. Albaugh, of Mt. Rainer, Maryland, plaintiff, pro se.

Thomas B. Finan, Attorney General, Robert F. Sweeney, Assistant Attorney General, of Baltimore, Maryland, for defendants.

Before: Sobeloff, Chief Circuit Judge, Thomsen, Chief Judge, and Northrop, District Judge.

OPINION

PER CURIAM:

At the primary election held in Maryland on May 19, 1964, plaintiff, William A. Albaugh, was an unsuccessful candidate for the Republican nomination for United States Senator. On June 9, 1964, he filed the present action in this court seeking a judgment declaring that the District

of Columbia is a part of the State of Maryland for purposes of United States Senator elections, and ordering defendants to treat that primary and any future election based thereupon, as null and void because residents of the District did not vote in that election. Plaintiff attacks the validity of Art. 33, section 143, Ann. Code of Md., as interpreted by the state officials. He requested the designation of a three-judge District Court to decide the issues raised, and such a court has been constituted. Defendants, the Governor and the Secretary of State of Maryland, moved to dismiss the complaint, and the plaintiff moved for summary judgment, as the case presents no disputed issue of fact.

The motion to dismiss is predicated on two grounds: (1) that the complaint fails to state a claim against the defendants upon which relief can be granted and (2) that the court lacks jurisdiction of the subject matter. No point is made of the propriety of a three-judge court to sit in this case.

In the light of recent decisions of the Supreme Court, we do not doubt the jurisdiction of a court to adjudicate the subject matter.

Defendants have raised various objections to plaintiff's standing and right to maintain the suit, but since he has raised the same question several times before in cases in which the merits have not been reached, it seems desirable to decide the merits here.

This court is clear that residents of the District of Columbia have no right to vote in Maryland elections generally, and specifically, in the selection of United States Senators.

Art. 1, section 8, of the Constitution of the United States provides:

"The Congress shall have power— * * *

> "To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States. * * *"

By Act of December 23, 1788, chapter 46, the General Assembly of Maryland authorized and required "the representatives of this state in the house of representatives in the congress of the United States * * * on the behalf of this state, to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States."

By an Act approved July 16, 1790, 1 Stat. 139[1], chapter 28, Congress enacted:

> "Section 1. That a district of territory, not exceeding ten miles square, to be located (within certain limits on the Potomac River) be, and the same is hereby accepted for the permanent seat of the government of the United States. *Provided nevertheless*, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.
>
> * * * * *
>
> "Section 6. That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid * * *."

On March 30, 1791, President Washington proclaimed the boundaries of a territory ten miles square, lying on both sides of the Potomac, as the seat of the national gov-

[1] This citation is correctly 1 Stat. 130

ernment. Included therein was the present District of Columbia, which had theretofore been a portion of the State of Maryland.

On December 19, 1791, the Legislature of the State of Maryland ratified the cession. Section 2 of chapter 45, of the Acts of 1791, provides:

> "That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinqtuished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States * * * *And provided also*, That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited."

On December 1, 1800, the District of Columbia became in fact the seat of the government of the United States, pursuant to 1 Stat. 139, ch. 28, § 6, *supra*; and on February 27, 1801, Congress enacted the "Organic Act of 1801" providing for the government of the District of Columbia. 2 Stat. 103, ch. 15.

Since the "Organic Act of 1801" it has been uniformly recognized by the executive, legislative and judicial branches of the government of the United States and of the State of Maryland that residents of the District of Columbia are no longer citizens of the State of Maryland. Indeed, in *Reily* v. *Lamar*, 6 U.S. (2 Cranch) 343, 356 (1805), Chief Justice Marshall declared:

> "By the separation of the district of Columbia from the state of Maryland, the complainant ceased to be a citizen of that state, his residence being in the city of Washington, at the time of that separation."

Plaintiff's arguments are based upon the fact that various statutes of the State of Maryland indicate that, during the period between 1790 and the "Organic Act of 1801," residents of the territory ceded by the State of Maryland may have been allowed to vote as residents of Prince George's County or Montgomery County. But plaintiff's arguments ignore the Organic Act, the decision of the Supreme Court in Reily, and the uniform construction given to the various acts cited above, over the period of more than a century and a half following their enactments.

An order will be entered dismissing the complaint, with costs.

/s/ Simon E. Sobeloff
Chief Judge, Fourth Circuit

/s/ Roszel C. Thomsen
Chief Judge, District Court

/s/ Edward S. Northrop
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. 15618

WILLIAM A. ALBAUGH,
Plaintiff,

v.

J. MILLARD TAWES, Governor of Maryland
and
LLOYD L. SIMPKINS, Secretary of State,
Defendants.

ORDER

The Plaintiff's Motion for Summary Judgment and the Defendant's Motion to Dismiss in the matter of William A. Albaugh v. J. Millard Tawes and Lloyd L. Simpkins having come on for hearing, and all parties in interest having been notified, and given the opportunity to be heard, the Court having considered the allegations and the answers thereto, and having heard all parties desiring to be heard, it is hereby:

ORDERED AND DECREED, on this 19th day of August, 1964, that the Plaintiff's Motion for Summary Judgment be denied, and the Defendants' Motion to Dismiss be granted, all costs in this proceeding to be paid by the Plaintiff.

/s Simon E. Sobeloff
Chief Judge, Fourth Circuit

/s Roszel C. Thomsen
Chief Judge, District Court

/s Edward S. Northrop
United States District Judge

Filed August 19, 1964